

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERRI PROFFITT)	
Claimant)	
VS.)	
)	
SWANSON CORPORATION)	Docket Nos. 147,906 and 147,907
HEN HOUSE INTERSTATE, INC.)	
Respondent)	
AND)	
)	
CONTINENTAL CASUALTY CO.)	
Insurance Carrier)	
)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

ON the 7th day of April, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Shannon S. Krysl, dated February 11, 1994, came on for oral argument.

APPEARANCES

The claimant appeared not having settled her claim against Swanson Corporation prior to oral argument. The respondent, Swanson Corporation, appeared by and through its attorneys, D. Steven Marsh of Wichita, Kansas. The respondent, Hen Houses Interstate, Inc., appeared by and through its attorney, Frederick J. Greenbaum of Kansas

City, Missouri. The Kansas Workers Compensation Fund appeared by and through its attorney, William Mitchell of Hutchinson, Kansas. There were no other appearances.

RECORD

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

STIPULATIONS

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

(1) The only issue for the Appeals Board to consider is whether the Administrative Law Judge erred in ordering the respondent, Swanson Corporation (hereinafter Swanson), and its insurance carrier to reimburse Hen House Interstate, Inc. (hereinafter Hen House) and its insurance carrier for temporary total, medical and vocational rehabilitation benefits paid to claimant in Docket No. 147,907 by Hen House when Swanson was never a party in that action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

(1) The Administrative Law Judge lacks the jurisdiction to make Swanson liable to Hen House for \$19,096.53 in temporary total benefits, \$30,902.48 for medical expenses, and \$6,408.47 for vocational rehabilitation expenses paid by Hen House in Docket No. 147,907 as Swanson was never a party to said action.

In this dual-docketed award, the claimant was awarded benefits against Swanson, in Docket No. 147,906, for injuries arising out of and in the course of claimant's employment for a series of injuries culminating on February 23, 1990. The Administrative Law Judge, in Docket No. 147,907, found claimant had suffered no injury arising out of and in the course of her employment while working for Hen House.

The Administrative Law Judge, in finding that the entire liability should be assessed against Swanson, ordered reimbursement to Hen House from Swanson for the monies expended by Hen House.

K.S.A. 44-534a(b) states:

“If compensation in the form of medical benefits, temporary total disability benefits or vocational rehabilitation benefits has been paid by the employer or the employer's insurance carrier either voluntarily or pursuant to a preliminary award entered under this section and, upon a full hearing on the claim, the amount of compensation to which the employee is entitled is found to be less than the amount of compensation paid or is totally disallowed, the employer and employer's insurance carrier shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a and amendments thereto, for all amounts of compensation so paid which are in excess of the amount of compensation the employee is entitled to as determined in the full hearing on the claim. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection, and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.”

The Workers Compensation Act allows for reimbursement under circumstances where benefits were ordered paid at a preliminary hearing or were voluntarily paid by the insurance company and the amount is later reduced or eliminated. In Docket No. 147,907, Hen House paid substantial sums to the claimant pursuant to a Preliminary Order. This Order was later reversed and Hen House found to be not liable for the claimant's injuries. As Swanson was never a party to Docket No. 147,907, the Administrative Law Judge would lack jurisdiction to order reimbursement to Hen House by Swanson.

Any such dispute between the insurance companies would necessarily be decided in an appropriate District Court as the Supreme Court has limited the Workers Compensation Division in its ability to supervise such disputes. In American States Ins. Co. v. Hanover Ins. Co., 14 Kan. App. 2d 492, 498, 794 P.2d 662, (1990), the Court held “Unless specifically allowed by statute, insurance companies may not litigate in the workers compensation division their respective liability for an award if the employee's interests are not at issue.”

As the claimant has reached an agreement with Swanson, there is no employee interest at issue which can be resolved by the Workers Compensation Division in this matter.

Thus, the only available remedy to Hen House through the Workers Compensation Act is to seek reimbursement from the Kansas Workers Compensation Fund through K.S.A. 44-534a.

K.S.A. 44-534a specifically allows that the Director of Workers Compensation shall determine the amount of compensation for which reimbursement is due and shall certify said amount to the Commissioner of Insurance for reimbursement. The Appeals Board is granted no statutory authority to award reimbursement under either K.S.A. 44-534a or K.S.A. 44-556.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 11, 1994, decision of Administrative Law Judge Shannon S. Krysl be affirmed in part and reversed in part and that Docket No. 147,907 be remanded to the Administrative Law Judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated this ____ day of May, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Kelly Johnston, PO Box 3089, Wichita, KS 67201-3089
D. Steven Marsh, 301 N Main, 600 Epic Ctr., Wichita, KS 67202-4806
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Shannon S. Krysl, Administrative Law Judge
George Gomez, Director